IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 6TH JULY 2006 / 15TH ASHADHA,1928

Crl.L.P..No. 322 of 2006()

CC.416/2002 of J.M.F.C.,CHAVAKKAD

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PETITIONER/COMPLAINANT

SEKHARAN, S/O.SANKUNNY,
MARAKKATH HOUSE, VAZHAPPULLY DESOM,
PERAKAM AMSOM, POOKODE VILLAGE, CHAVAKKAD TALUK.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS: ACCUSED AND STATE

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1. DOMINI, S/O.VAZHAPULLY VARGHESE,
PERAKAM P.O., CHAVAKKAD TALUK,
THRISSUR DISTRICT.

2. ANI ANTONY, ARAKKAL HOUSE,
ARNOSE NAGAR, P.O.VELOOR, KECHERY,
THRISSUR DISTRICT.

3. K.L.MINI, W/O.V.V.DOMINI,
VAZHAPULLY HOUSE, PERAKAM P.O.,
CHAVAKKAD, THRISSUR DISTRICT.

4. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

THIS CRIMINAL LEAVE PETITION HAVING BEEN FINALLY HEARD ON 06/07/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.HEMA, J.

CRL.L.P.NO. 322 OF 2006

Dated this the 6th day of July, 2006

O R D E R

This is an application for special leave to appeal from an order of acquittal. Petitioner is the complainant who filed a complaint before the Magistrate's Court alleging offence under Section 420 of the Indian Penal Code ('IPC', for short) against the accused-respondents 1 to 3. As per the allegations in the complaint, the petitioner deposited a huge amount in the finance company of which the second respondent is the partner. This was in January, 1995. The petitioner was entitled to receive Rs.6,00,000/- from the company in April, 1998. The petitioner made a demand to return the money. But the accused evaded repayment. First accused is an employee of the finance company and his wife is the third accused. According to the complainant, accused 1 and 3 are running the affairs of the finance company.

2. Since the accused failed to return the money, a complaint was given to the Circle Inspector of Police, Guruvayoor on 28.2.1999 and in the Police Station there

was a mediation. AS per the terms of the mediation, it was decided that 42 ¼ cents of property belonging to the accused 1 and 3, will be registered in favour of the petitioner. 21 1/8 cents of property was registered in favour of the petitioner, consequent to this settlement. There was also an understanding that if the entire property is not registered, 50% of the amount will be repaid. But the property was not assigned nor was the money returned. The complainant's case is that the accused had 'conspired' at the time when the amount was received in deposit and they had dishonest intention to cheat the petitioner and they have received the amount from the petitioner and appropriated the same to their benefit. According to the petitioner, the offence made out is under Section 420 IPC.

3. To prove the case, the petitioner examined Pws 1 to 3 and marked Exhibits P1 and P2 before the court below. The court on analysis of the evidence found that no offence under Section 420 is made out. It was held that the complainant-petitioner has not succeeded in proving the alleged offence against the accused. The court below thereafter acquitted all the accused and hence the petitioner has filed a Special Leave Petition for filing of appeal against the order of acquittal.

4. As per the allegations in the complainant, accused cheated the complainant by receiving the amount as deposit and they had a dishonest intention even at the time when the amount was received. This has been specifically stated in the complaint in paragraphs 3 and 7. But this aspect was not stated by the petitioner while examined as PW1. He had no case that the accused had any dishonest intention at the time when the amount was received as deposit. Learned counsel for the petitioner vehemently contended that as per the allegations in the complaint itself, the complainant put forward a case that the accused had dishonest intention to cheat the complainant even at the time when the deposit was received from the complainant. Therefore, this was more sufficient to make out an offence under Section 415 IPC.

5. On a reading of the complaint, the evidence and on hearing learned counsel for the appellant, I am of the view that the offence under Section 415 IPC has not been made out, even if the entire allegations made in the complaint are admitted. I shall extract Sections 415 and 420 of IPC as hereunder:

> "Section 420. **Cheating and dishonestly inducing delivery of property.**- Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person,

> or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.
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> Section 415.**Cheating**.- Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".
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> *Explanation.*- A dishonest concealment of facts is a deception within the meaning of this section."

6. A reading of Section 420 read with Section 415 IPC make it abundantly clear that the person deceived by the accused must have been dishonestly induced by the person who cheats him. In other words, to cheat a person, the offender has to dishonestly induce the person so deceived. One of the vital ingredients of the offence is dishonest inducement of the person deceived to deliver any property to any person etc. But there is no whisper in the complaint or in the evidence that the accused

dishonestly induced the complainant to deliver any property to any person. The petitioner has no case in the complaint that the complainant was dishonestly induced to make the deposit in the bank.

7. “Inducement” involves a positive act. It can be by representation or some other means. As per the Concise Oxford Dictionary, the word, “induce' means, “to prevail upon, to persuade”. The word, 'persuade' means, “cause another person to believe or convince”. For inducing or persuading a person, the person who induced has to prevail upon the person so induced. To prevail upon the person so induced the person who induces has to do something. He has to make some representation or do something to convince or prevail upon the person induced. But the complainant has absolutely no case in the complaint or in his evidence that the accused has done anything to prevail upon him or to persuade him or to convince him or to make him believe something so as to procure a deposit in the finance company. In the absence of any allegation in the complaint and evidence to show that the accused had at any time dishonestly induced the person by making a representation or by any other act to make deposit, no offence of cheating is made out.

8. The only allegation made in the complaint is that the accused had conspired among themselves at the time of receipt of the deposit and they had a dishonest intention to cheat them by receiving the deposit and appropriate the same for their benefit. This may not be sufficient to make out the ingredient of offence under Section 415 IPC. In the absence of any allegation in the complaint or in the evidence that the accused had dishonestly induced the complainant to make the deposit on a particular date or time, it cannot be said that an offence under Section 420 is made out.

In the above circumstances, I find that this is not a fit case to grant special leave.

The petition is dismissed.

K.HEMA, JUDGE

vgs.